

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION**

JOE HOLCOMBE, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
	)	CIVIL ACTION NO. 5:18-cv-555-XR
v.	)	(consolidated cases)
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
	)	
	)	
	)	
	)	

**DEFENDANT UNITED STATES OF AMERICA'S DEPOSITION  
DESIGNATIONS OF THE TESTIMONY OF CANDACE MARLOWE**

Defendant submits the following designations of the testimony given by Candace Marlowe by deposition on June 18, 2020. An excerpted transcript reflecting these designations is attached as Exhibit A. This document is Government Trial Exhibit GEX-2.

<u>Designated testimony</u>	<u>Transcript</u>
19:4-25:18 [JEX 63]	<p>·4· Okay.· And just so you know, there --</p> <p>·5· there's a number in the lower right-hand corner, which</p> <p>·6· is almost all of your last name.· We forgot the "e" at</p> <p>·7· the end.· I apologize for that.· Umm.· But these are the</p> <p>·8· documents we received from you, umm, what I believe you</p> <p>·9· referred to as the "Kelley file," and we've now marked</p> <p>10· those with a number, so we can refer to them by that</p> <p>11· number, umm, during the deposition today.· So if I say</p> <p>12· "Marlowe 1," then I'd be referring to -- to this page.</p> <p>13· Umm.· In looking at this first page of</p> <p>14· the document, is this a document you've seen before?</p> <p>15· A.· Yes.</p> <p>16· Q.· Okay.· Now, I'm just going to scroll to the</p> <p>17· remainder of -- of this document.</p> <p>18· MR. FURMAN:· And for the record, this</p> <p>19· will be Exhibit 1.· We'll be marking the -- the file</p> <p>20· provided to us by Ms. Marlowe as Exhibit 1.· So that's</p>

21· the 47-page document received in response to the  
22· subpoena.  
23· (Exhibit 1 designated.  
24· Q· (BY MR. FURMAN) There we go· Is this the  
25· second page in front of you?  
·1· A· Yes.  
·2· Q· Page 3?  
·3· A· Yes.  
·4· Q· Page 4, the instructions?  
·5· A· Yes.  
·6· Q· And Page 5?  
·7· A· Yes.  
·8· Q· Does all that look familiar to you?  
·9· A· Yes.  
10· Q· Thank you.  
11· (Document taken off screen.  
12· Q· (BY MR. FURMAN) Thanks.  
13· And what did you do when you received  
14· that document?  
15· (Witness made distinctive sound.  
16· A· Contacted my lawyer [laughed].  
17· Q· (BY MR. FURMAN) [Laughed]· And that lawyer,  
18· that's Mr. Myers?  
19· A· Yes.  
20· Q· Thank you.  
21· And, umm, did you ultimately search for  
22· documents?  
23· A· Yes.  
24· Q· And where did you search for documents?  
25· A· In my office.  
·1· Q· Okay· And when you say your office, what do  
·2· you mean by that?  
·3· A· Umm· I have an office that I rent in  
·4· New Braunfels Counseling Center.  
·5· Q· Okay· And that's the office that you searched  
·6· for records in response to the subpoena?  
·7· A· Yes.  
·8· Q· So you keep -- you keep your client files in  
·9· that particular office?  
10· A· Yes.  
11· Q· And did you keep any client files for -- for  
12· New Braunfels Counseling clients, do you keep them  
13· elsewhere, any files?  
14· A· No.  
15· Q· Do you keep any electronic files for your  
16· clients?

17· A· No.

18· Q· And the document you provided to us, that was  
19· the complete file for -- for Mr. Kelley?

20· A· Yes.

21· Q· And did you -- or -- Well, did you take any  
22· notes regarding your sessions with Mr. Kelley that were  
23· not in the client file?

24· A· No.

25· Q· And were there any documents for Mr. Kelley  
·1· that, umm, might have been lost or destroyed for -- you  
·2· know, due to lapse of time or otherwise removed from the  
·3· file?

·4· A· No.

·5· Q· All right· And I appreciate your time in  
·6· assembling those documents as well.

·7· At this time I'd like to get a little bit  
·8· into your background· Umm.

·9· If you could say your, umm -- What's your  
10· highest level of education?

11· A· I have a master's degree.

12· Q· In what area of study?

13· A· Psychology.

14· Q· I have a master's in psychology as well.

15· Umm· Any other training?

16· A· No· Just psychology [laughed].

17· Q· [Laughed]· Well, that's a good field of  
18· study, so I can understand that· Umm.

19· And your professional title, that's a  
20· Licensed Professional Counselor?

21· A· Yes.

22· Q· And what does that mean?

23· A· It means that I'm licensed by the state to  
24· counsel.

25· Q· And what did you have to do to obtain that  
·1· license?

·2· A· Umm· I got my master's degree; and then I did  
·3· a certain number of hours supervised by an LPC  
·4· supervisor; and then I took a licenser exam.

·5· Q· And was that a written exam?

·6· A· Yes· No· It was electronic· I'm sorry.

·7· Q· Oh· I'm behind the times· I apologize.

·8· Okay· And do you have any sort of --

·9· I -- I don't know how this works for, umm, Licensed  
10· Professional Counselors, but do you have any, like,  
11· equivalent of like a board certification or  
12· specialization within counseling?

13· A· No.

14· Q· And -- And are you required to, umm, meet any  
15· requirements to keep that license?

16· A· Yes· Every two years you renew your license.

17· You have to do 24 CEUs, continuing edu -- education  
18· credits.

19· Q· Okay· Anything else?

20· A· No.

21· Q· Okay.

22· A· Well, you pay money [laughed].

23· Q· I -- I'm sorry· I didn't catch that.

24· A· I said you -- you pay money for it· Other  
25· than that --

·1· Q· I -- Of course [laughed]· Of course· It goes  
·2· for lawyers as well.

·3· Umm· Are you a member of any  
·4· professional organizations?

·5· A· No.

·6· Q· And how long have you been a Licensed  
·7· Professional Counselor?

·8· A· For six years.

·9· Q· Six years· So roughly 2014?

10· A· Yeah.

11· Q· I'm sorry· What year did you get your  
12· master's degree?

13· A· I graduated December 2011.

14· Q· And the time period between your master's and,  
15· umm, getting your license, was that time spent in  
16· accumulating hours to obtain that license?

17· A· Yeah, as a licensed professional intern,  
18· you -- yeah, I was supervised, and it takes that long to  
19· accumulate the hours for it.

20· Q· Understood.

21· And, Ms. Marlowe, are you currently  
22· employed?

23· A· Yes.

24· Q· Where do you work currently?

25· A· I have a contract with New Braunfels  
·1· Counseling Center· It's a private practice.

·2· Q· Anywhere else?

·3· A· No.

·4· Q· And when you say you have a contract, could  
·5· you explain that a little more?

·6· A· Umm· The owner of the business has slots for  
·7· contracts, people to come in; and basically you're just  
·8· renting a room and you pay her a certain amount of --

	<p>·9· amount of money to be there for X amount of years.</p> <p>10· Q· Okay· And other than renting you the room,</p> <p>11· does New Braunfels Counseling provide any other services</p> <p>12· for you?</p> <p>13· A· They run the billing and make appointments and</p> <p>14· keyed up -- keep up with our insurances.</p> <p>15· Q· So some of the administrative-type functions?</p> <p>16· A· Yes.</p> <p>17· Q· Okay· Anything else they do?</p> <p>18· A· No [laughed].</p>
42:22-46:20 [JEX 63]	<p>22· Q· I'm on Marlowe 47· It says "New Braunfels</p> <p>23· Counseling Center, Initial Assessment."· Do you see</p> <p>24· that?</p> <p>25· A· Yes.</p> <p>·1· Q· Okay· And what is this form?</p> <p>·2· A· This is the form we utilize with every new</p> <p>·3· patient to just do the diagnosis· It's just getting a</p> <p>·4· gist of what the whole picture looks like of the person.</p> <p>·5· Q· And that's the first time you meet with a</p> <p>·6· client?</p> <p>·7· A· Yes· It's the initial assessment.</p> <p>·8· Q· Umm· Okay· And -- And what are your goals</p> <p>·9· during that first meeting?</p> <p>10· A· To assess how treatment will be and if it's a</p> <p>11· fit for them to stay with me.</p> <p>12· Q· And how long is the initial appointment</p> <p>13· typically?</p> <p>14· A· Just an hour.</p> <p>15· Q· Do you recall if it was any longer or shorter</p> <p>16· for Mr. Kelley's first appointment?</p> <p>17· A· Umm· I don't recall.</p> <p>18· Q· And on this form, is that your handwriting?</p> <p>19· A· Yes [laughed].</p> <p>20· Q· And is that your signature at the bottom?</p> <p>21· A· Yes.</p> <p>22· Q· And the date in the upper right-hand corner of</p> <p>23· June 6th, 2016, does that sound right?</p> <p>24· A· Yes.</p> <p>25· Q· And on this form there are various categories.</p> <p>·1· It says "Presenting Problem," "Symptoms," "Diagnosis."</p> <p>·2· And are these the categories of questions you would ask</p> <p>·3· a client during the first meeting?</p> <p>·4· A· Yes.</p> <p>·5· Q· You did you have any -- any sort of standard</p> <p>·6· structure or format for asking these questions?</p> <p>·7· A· No.</p>

·8· Q· All right· Now looking at the form, it says  
·9· ref -- "Referred From: Google." So it sounds like he  
10· just -- he found New Braunfels Counseling online· Is  
11· that your understanding?  
12· A· Yes.  
13· Q· And under "Presenting Problem," umm, it says,  
14· "just need to talk." Umm· Is that something clients  
15· commonly put in the area?  
16· A· Sometimes.  
17· MS. GREEN:· Commonly what?  
18· MR. MYERS:· "Put."  
19· MS. GREEN:· "Put."  
20· Q· (BY MR. FURMAN) And during that first meeting,  
21· did he provide any detail about what he wanted to talk  
22· about?  
23· A· I don't recall.  
24· Q· At a later time did you come to realize or  
25· understand why you thought Mr. Kelley was in treatment  
·1· with you?  
·2· A· The more we talked, it was predominantly  
·3· stress management about finances.  
·4· Q· So stress management of finances was the  
·5· primary issue?  
·6· A· Yeah.  
·7· Q· And any other significant issues that he  
·8· brought up during the sessions?  
·9· A· Those were mainly it.  
10· Q· All right· And do you find in your practice  
11· that sometimes clients are not candid or forthcoming  
12· about the reason they're seeking treatment?  
13· A· Sometimes.  
14· Q· And did you find that to be the case with  
15· Mr. Kelley?  
16· A· No.  
17· Q· Okay· Umm· So just very generally, when you  
18· first met Mr. Kelley, what was your impression of him?  
19· A· He was very quiet and a little bit guarded,  
20· nervous.  
21· Q· Anything that -- else that sticks out to you  
22· from that first appointment as we stand here today?  
23· A· No, that's mainly it· He was just very  
24· guarded, very hesitant.  
25· Q· Did that change during the course of therapy?  
·1· A· Slowly he became less guarded.  
·2· Q· Did he become less quiet, I guess, more  
·3· talkative?

	<p>·4· A.· A little bit at times.</p> <p>·5· Q.· What about nervous?· Did he seem less nervous</p> <p>·6· later on?</p> <p>·7· A.· That was pretty consistent [laughed].</p> <p>·8· Q.· Did you have an understanding of why he was so</p> <p>·9· nervous?</p> <p>10· A.· No.</p> <p>11· Q.· And at this point in time was there any --</p> <p>12· ever any reason to believe that mister -- Did Mr. Kelley</p> <p>13· in any way seem any -- any different than a typical</p> <p>14· client that might walk into your office?</p> <p>15· A.· No.</p> <p>16· Q.· And during any -- any of the time -- During</p> <p>17· any of the times that you treated Mr. Kelley, did he</p> <p>18· ever seem like anyone other than a typical client that</p> <p>19· you would treat in your office?</p> <p>20· A.· No.</p>
47:12-48:19	<p>·1· A.· Later times he shared that he had tried, umm,</p> <p>·2· Xanax and Klonopin for anxiety.</p> <p>·3· Q.· And other than the Xanax, Klonopin, and the</p> <p>·4· antipsychotics, did he mention any other medicines he</p> <p>·5· had taken --</p> <p>·6· A.· No.</p> <p>·7· Q.· -- umm, to you at any time?</p> <p>·8· A.· No.</p> <p>·9· Q.· With regard to the history of antipsychotics,</p> <p>10· did he tell you which medications he had been prescribed</p> <p>11· specifically?</p> <p>12· A.· No, he did not specify.</p> <p>13· Q.· And did he say who prescribed them to him?</p> <p>14· A.· No, not specifically; just that it was during</p> <p>15· the time in the Air Force.</p> <p>16· Q.· Okay.· With respect to the Xanax and Klonopin,</p> <p>17· did he ever tell you who had prescribed those</p> <p>18· medications for him?</p> <p>19· A.· No.</p>
49:13-50:20	<p>13· Q.· Given the lack of history of psychosis but the</p> <p>14· prescription of antipsychotic medicine, is that</p> <p>15· something that concerned you?</p> <p>16· A.· No.</p> <p>17· Q.· And why is that?</p> <p>18· A.· Well, I mean, he was under somebody else's</p> <p>19· treatment, and he wasn't very forthcoming with that</p> <p>20· whole time period, so -- and then it was in the past, so</p> <p>21· it didn't pertain to the now.</p> <p>22· Q.· Understandable.</p>

	<p>23· So you felt -- and correct me if I'm</p> <p>24· wrong, but you felt that he might have not been</p> <p>25· providing all of the details of his medication history?</p> <p>·1· Would that be fair?</p> <p>·2· A· Yes· He was pretty guarded.</p> <p>·3· Q· And just generally did you have reason to</p> <p>·4· question whether he was providing you accurate</p> <p>·5· information with respect to other areas of questioning</p> <p>·6· as well?</p> <p>·7· A· Well, I mean, honestly, you never really know</p> <p>·8· if people are being honest with what they're saying.</p> <p>·9· You've just got to kind of roll with it.</p> <p>10· Q· So you weren't attempting to, I guess, verify</p> <p>11· at that first meeting whether his history was a hundred</p> <p>12· percent complete; is that right?</p> <p>13· A· That's what we did later on as you develop the</p> <p>14· relationship.</p> <p>15· Q· Understood.</p> <p>16· So you felt building a rapport with</p> <p>17· Mr. Kelley was -- was paramount during that first</p> <p>18· meeting as well as getting important data and that</p> <p>19· details could be filled in later?· Is that fair?</p> <p>20· A· Yes.</p>
50:24-53:22 [JEX 63]	<p>24· Q· Looking under "Substance Abuse History" --</p> <p>25· A· Yeah.</p> <p>·1· Q· -- if I'm reading it correctly, it says,</p> <p>·2· "smokes weed every day; alcohol," and -- and did I read</p> <p>·3· that right?</p> <p>·4· A· Yes [laughed].</p> <p>·5· Q· Okay· Umm· So it sounds like he was saying</p> <p>·6· he was using marijuana every day; is that right?</p> <p>·7· A· Yes.</p> <p>·8· Q· Was that concerning to you at the time?</p> <p>·9· A· No.</p> <p>10· Q· And why is that?</p> <p>11· A· Sometimes people will utilize marijuana to</p> <p>12· self-medicate for anxiety, and it just didn't seem like</p> <p>13· an extreme thing at the time.</p> <p>14· Q· Understood.</p> <p>15· Did Mr. Kelley tell you why he used</p> <p>16· marijuana every day?</p> <p>17· A· I don't recall.</p> <p>18· Q· Did you have a belief at the time as to why he</p> <p>19· was regularly using marijuana?</p> <p>20· A· Not at the time, not at the initial session.</p> <p>21· Q· Did you later just develop a belief as to why</p>



22· he was using it?  
23· A· Yes· I developed the belief that he was  
24· self-medicating for -- to sleep and to manage the  
25· anxiety, to calm down.  
1· Q· So in his context you -- you saw the use of  
2· marijuana as primarily therapeutic? Is that fair?  
3· A· Yes.  
4· Q· Was the use of marijuana causing any problems  
5· in his life?  
6· A· Not that I can recall.  
7· Q· In reference to alcohol, do you remember what  
8· he said about -- about that?  
9· A· Just that he would drink at times.  
10· Q· Do you recall how much he would say he would  
11· typically drink?  
12· A· No, I don't.  
13· Q· Sitting here today do you recall if his  
14· recounting of alcohol use was more consistent with  
15· social drinking rather than binge drinking?  
16· A· It definitely wasn't social· I -- Well, he  
17· drank by himself.  
18· Q· And do you know if he drank to -- to get drunk  
19· or to get a high?  
20· A· To get drunk.  
21· Q· And at the time did you see it as particularly  
22· problematic?  
23· A· No, because it wasn't excessive every day from  
24· what I was informed.  
25· Q· Understood.  
1· And during the time that you saw  
2· Mr. Kelley, did his alcohol -- his self-reported alcohol  
3· use ever change?  
4· A· No.  
5· Q· And during your treatment of Mr. Kelley, did  
6· you ever come to suspect he had a problem with alcohol  
7· abuse?  
8· A· No.  
9· Q· At the time of the first intake session, would  
10· you have also asked about the use of other substances?  
11· A· Yes.  
12· Q· And -- And if Mr. Kelley had reported using  
13· other illegal drugs or substances, would you have  
14· written that down?  
15· A· Yes.  
16· Q· And did you feel at the time he was being  
17· honest about his use of alcohol and -- and substances?

	<p>18· A· Yes, as far as I knew.</p> <p>19· Q· Did you ever at any time have reason to doubt</p> <p>20· that he was being honest to you about his use of</p> <p>21· substances?</p> <p>22· A· No.</p>
63:20-65:4	<p>20· Q· And during that first meeting did he talk</p> <p>21· about, umm, having any -- any friends?</p> <p>22· A· No.</p> <p>23· Q· And did he at a later time?</p> <p>24· A· When he came back the one time in '17, he had</p> <p>25· more friends.</p> <p>·1· Q· So you said "he had more friends"?</p> <p>·2· A· Uh-huh.</p> <p>·3· MR. MYERS· Is that a "yes"?</p> <p>·4· THE WITNESS· I guess.</p> <p>·5· MR. MYERS· No· You have to say "yes."</p> <p>·6· You said --</p> <p>·7· THE WITNESS· Yes.</p> <p>·8· MR. FURMAN· -- "Uh-huh."</p> <p>·9· THE WITNESS· I'm sorry [laughed].</p> <p>10· MR. FURMAN· [Laughed]· Thank you.</p> <p>11· Q· (BY MR. FURMAN) Do you know if he had any</p> <p>12· friends during this time of the first meeting?</p> <p>13· A· Not that I was informed of, no.</p> <p>14· Q· And -- And up until that last meeting in 2017,</p> <p>15· and any -- any time before then, did he inform you of</p> <p>16· having any -- any friends?</p> <p>17· A· No.</p> <p>18· Q· Was that concerning to you at all?</p> <p>19· A· Yes, but it made sense because he was guarded.</p> <p>20· Q· I -- Other than him being guarded, do you have</p> <p>21· any -- any other reason to believe that he might have</p> <p>22· had issues making friends?</p> <p>23· A· Because he was bullied and he had anxiety.</p> <p>24· Those people are less likely to trust other people to be</p> <p>25· friends with because they don't want to get hurt again.</p> <p>·1· Q· That's understandable.</p> <p>·2· Any other reason with Mr. Kelley you</p> <p>·3· thought he might have had issues making friends?</p> <p>·4· A· No.</p>
65:16-69:16 [JEX 63]	<p>16· Q· Okay· I'd like to look at, on the same form,</p> <p>17· under "Symptoms," and -- and just -- just so I'm clear,</p> <p>18· are these symptoms that the patient's reporting or</p> <p>19· things you're observing or both or what is this</p> <p>20· referring to?</p> <p>21· A· Kind of those key words that he would say· So</p>

22· it's -- it's not -- It's things he said.

23· Q· Okay· And -- And it says, "sleeps poorly."

24· Do you recall what he said about his sleep?

25· A· No, I don't recall.

·1· Q· Do you recall from later sessions some of the

·2· sleeping difficulties he might have described to you?

·3· A· No.

·4· Q· What about nightmares? Do you recall anything

·5· about that?

·6· A· No, I believe that was not mentioned again.

·7· Q· And during that first meeting did he provide

·8· any details on the nightmares?

·9· A· No.

10· Q· Next you have, "paranoid." Is -- And so this

11· is something he's reporting to you?

12· A· Yes.

13· Q· He -- He's saying he's paranoid?

14· A· Yes.

15· Q· So, yes?

16· A· Yes.

17· Q· Okay· Is that something a person who's

18· paranoid would typically say?

19· A· Sometimes.

20· Q· What about in your experience?

21· A· Sometimes.

22· Q· And was his -- His being paranoid or reporting

23· himself to be paranoid, was that consistent with your

24· impression of him?

25· A· It correlated to the anxiety, yes.

·1· Q· Did he provide any examples of being paranoid

·2· in that first session?

·3· A· No.

·4· Q· What about at a later time?

·5· A· I don't recall.

·6· Q· Did he exhibit any characteristics consistent

·7· with someone who was paranoid when you saw him in

·8· session?

·9· A· Yes.

10· Q· What were some of those?

11· A· The being guarded and kind of passive with his

12· words, hesitant.

13· Q· When you say "passive with his words," what do

14· you mean by that?

15· A· Kind of gauging who I was and getting a feel

16· for if he could talk to me, so kind of saying a little

17· bit of something and seeing how I would react to it.

18· Q· Did it sound like he was reticent to speak his  
19· mind?

20· A· Yeah· Yes.

21· Q· And is paranoia something in a client you'd be  
22· concerned about?

23· A· It depends on how severe it is.

24· Q· How severe do you think Mr. Kelley's was at  
25· this time?

·1· A· Not something alarming.

·2· Q· So his level of paranoia wasn't something that  
·3· was alarming to you?

·4· A· Not at the time, no.

·5· MR. SCHREIBER· Objection· Asked and  
·6· answered.

·7· Q· (BY MR. FURMAN) At any time did his paranoia  
·8· become alarming to you?

·9· A· When he found out his wife cheated on him.

10· Q· And that's during a later session?

11· A· Yes.

12· Q· Okay· I -- I have a -- treatment notes here.

13· We can talk about that a little bit more, umm, when we  
14· get there, if that's okay.

15· When he presented to you this first time,  
16· did he want to work with you on being less paranoid?

17· A· No.

18· Q· Was it something you were trying to treat?

19· A· No.

20· Q· Can paranoia be consistent with a more -- or  
21· with a severe psychiatric diagnosis?

22· A· Potentially.

23· Q· And did you have any concerns here that his  
24· level of paranoia was consistent with a more severe  
25· psychiatric diagnosis?

·1· A· No.

·2· Q· And just to make sure I'm clear, when I --  
·3· when I said "severe psychiatric diagnosis," what does  
·4· that mean to you?

·5· A· Like schizophrenia or something along those  
·6· lines.

·7· Q· But you were more -- You were -- were not  
·8· worried about his paranoia being, like I said, a  
·9· psychotic level at this time?

10· A· Correct.

11· Q· Did you ever have concerns that his paranoia  
12· reached a psychotic level?

13· A· No.

	<p>14· Q· Next under "Symptoms" you -- you wrote,</p> <p>15· "stressed."· Do you recall what he was stressed about?</p> <p>16· A· Finances.</p>
72:9-78:25 [JEX 63]	<p>·9· Next on the "Symptoms" list, you have,</p> <p>10· "numb."· Umm· What is that referring to?</p> <p>11· A· He said sometimes he felt numb.</p> <p>12· Q· And what kind of, I guess, mental health</p> <p>13· issues or psychotic diagnoses can that be consistent</p> <p>14· with?</p> <p>15· A· Depression· Depression can make somebody feel</p> <p>16· empty.</p> <p>17· Q· Anything else?</p> <p>18· A· No, that's predominantly where we went with</p> <p>19· that, was it was just a very sad, empty place, numb.</p> <p>20· Q· So in Mr. Kelley's circumstances, you felt the</p> <p>21· numbness was related to his being depressed?· Is that</p> <p>22· fair?</p> <p>23· A· Yes.</p> <p>24· Q· Were you ever concerned that the numbness was</p> <p>25· a sign of a more significant mental health issue like</p> <p>·1· psychosis or disassociation?</p> <p>·2· A· No.</p> <p>·3· Q· And then the next sentence, "depressed," so</p> <p>·4· we've -- we kind of got into that· Other than being</p> <p>·5· numb, what else made you -- or what else he said was</p> <p>·6· consistent with depression?</p> <p>·7· A· He said he was depressed.</p> <p>·8· Q· Was that consistent with your observation?</p> <p>·9· A· Yes.</p> <p>10· Q· What did you observe with him that was</p> <p>11· indicative of depression?</p> <p>12· A· Just the -- the thing -- the culmination of</p> <p>13· the things he was saying sounded like a depressed person</p> <p>14· based off of the diagnostic manual.</p> <p>15· Q· When we refer to "diagnostic manual," is that</p> <p>16· the -- the DSM?</p> <p>17· A· Yes.</p> <p>18· Q· Did he talk about ever being on any medication</p> <p>19· to treat depression?</p> <p>20· A· No· He had only talked about the</p> <p>21· antipsychotics and then later the anxiety medicines.</p> <p>22· Q· Did you feel that antidepressant medication</p> <p>23· might have been helpful in his case?</p> <p>24· A· You know, we never talked about it.</p> <p>25· Q· That -- That's fair.</p> <p>·1· And earlier we talked about the -- the</p>

·2· use of marijuana.· Umm.· At this time was he doing  
·3· anything else to treat his depression?  
·4· A.· No.  
·5· Q.· And did you have any sense at this time as to  
·6· what was causing his [indiscernible]?  
·7· MS. GREEN:· His what?· Causing his what?  
·8· MR. FURMAN:· Sorry.  
·9· Q.· (BY MR. FURMAN) Causing his depression?  
10· A.· Umm.· No.· I mean, probably -- No, not at the  
11· time.· It was -- It was very much an initial session.  
12· Q.· Understood.  
13· But what about later?· Did you later have  
14· a sense of what had been -- might have been causing his  
15· depression?  
16· A.· His stress; the pressure he put on himself.  
17· Q.· Anything else?  
18· A.· That's what I gathered.· No, not anything  
19· else.  
20· Q.· Thank you.  
21· And -- And, lastly, you have, "don't  
22· care," in quotes.· Does quotes mean this is a statement  
23· he made?  
24· A.· Yes.  
25· Q.· And to you what was that statement indicative  
·1· of?  
·2· A.· It correlates to the depressed state and the  
·3· numbness.· Sometimes people just say they don't care.  
·4· Q.· So it sounds like he was, I guess, apathetic  
·5· during that meeting?  
·6· A.· Yes.  
·7· Q.· And other than the symptoms here, do you  
·8· recall if he brought to your attention any other  
·9· symptoms during that first meeting?  
10· A.· No, I don't recall.  
11· Q.· And if other symptoms were important, would  
12· you have written them down?  
13· A.· Absolutely.  
14· Q.· And during the course of Mr. Kelley's  
15· treatment were there other -- were there significant  
16· symptoms -- new significant symptoms that came about?  
17· A.· No; just more -- more of what was already  
18· there, more of the anxiety, the stress.  
19· Q.· So the latest symptoms were just consistent  
20· with a different level of the symptoms described here?  
21· Is that fair?  
22· A.· Yes.

23· Q· I'm going down to -- more towards the bottom  
24· of the page, where it says "Danger to Self/Others."· Do  
25· you see that?

·1· A· Yeah.

·2· Q· And it says, "Passive· SI."· What does that  
·3· mean?

·4· A· Suicidal ideations.

·5· Q· And could you just ec -- Could you explain  
·6· what "passive" sudis -- "suicidal ideation" is?

·7· A· That is sometimes the person thinks of wanting  
·8· to die or kill themselves or just not be here, but they  
·9· don't have a plan or intent.

10· Q· Thank you.

11· Do you recall any examples that he gave  
12· during that first session of passive suicidal ideation?

13· A· No.

14· Q· Was that something that was concerning to you?

15· A· Not at the time because it correlates with  
16· depression and there was no intent or plan.

17· Q· So to determine whether someone is suicidal in  
18· addition to ideation, you looked at -- you -- you  
19· typically look at intent and plan as well; is that  
20· right?

21· A· Intent, plan, or history, yes, that's right.

22· Q· Did he disclose any history of suicidal  
23· attempts or suicidal ideation in the past?

24· A· No· I would have written it down.

25· Q· In other times did -- during your treatment of  
·1· him, did he ever express passive suicidal ideation?

·2· A· I don't recall.

·3· Q· And do you recall if his suicidality behaviors  
·4· ever increased to include intent and/or plan?

·5· A· No.

·6· Q· So, no -- no, they did not?

·7· A· No, they did not· They did not increase that  
·8· I was aware of.

·9· Q· Thank you.

10· So is it fair that at the time of this  
11· appointment, you had no reason to believe he was going  
12· to hurt himself?

13· A· Correct.

14· Q· And at this appointment did you have any  
15· reason to believe that he would hurt anyone else?

16· A· No.

17· Q· At any time during the course of your  
18· treatment with Mr. Kelley, did you have reason to

	<p>19· believe that he would hurt someone else?</p> <p>20· A· No.</p> <p>21· Q· Was Mr. Kelley someone you considered in any</p> <p>22· regard a risk for violence during your treatment of him?</p> <p>23· A· No.</p> <p>24· Q· Given the potential of certain persons with</p> <p>25· mental health issues to harm themselves or others, umm,</p> <p>·1 do you routinely ask clients if they have weapons or</p> <p>·2 firearms in the home?</p> <p>·3· A· No.</p> <p>·4· Q· Is that something you ever ask of clients?</p> <p>·5· A· If they have expressed that they have intent</p> <p>·6· or a plan, then that's the next question, but not</p> <p>·7 otherwise.</p> <p>·8· Q· And with Mr. Kelley, did you ever ask him if</p> <p>·9 he had firearms in the home?</p> <p>10· A· No.</p> <p>11· Q· Did you ever ask him if he had access to</p> <p>12· firearms?</p> <p>13· A· I didn't have to because in the first session,</p> <p>14 he mentioned he liked hunting hogs and deer, so I</p> <p>15 assumed he had hunting stuff for that.</p> <p>16· Q· [Laughed].· That's a fair point.· I guess...</p> <p>17 So when he was referring to hunting hogs</p> <p>18 and deer, umm, I guess he wasn't hunting with a bow and</p> <p>19 arrow; is that right?</p> <p>20· A· Correct.· I guess I just assumed it was a gun.</p> <p>21 I don't know anything about hunting.</p> <p>22· Q· When he described the hunting, did he describe</p> <p>23 any specifics of -- of the firearms, what type or whose</p> <p>24 they were, any of those details?</p> <p>25· A· No.</p>
79:4-84:22 [JEX 63]	<p>·4· Q· (BY MR. FURMAN) And before we get to that</p> <p>·5 first treatment, I just want to, umm, focus on the --</p> <p>·6 the diagnosis you gave Mr. Kelley, umm, in this form.</p> <p>·7 And -- And just for background information is this five</p> <p>·8 axes here.· So what are those five axes related to?</p> <p>·9· A· Umm.· It's a different part of the diagnosis</p> <p>10 to kind of break down where is the person at.· Like</p> <p>11 Axis I is the main diagnosis.· Axen -- Axis II is for</p> <p>12 personality diagnoses.· Axis III is for medical issues</p> <p>13 or -- how do you say -- diagnoses.· Axis IV are the</p> <p>14 stressors or the -- kind of the heavy hitters of why</p> <p>15 they would be in therapy, like the things that are</p> <p>16 wrong.· And Axis V is the severity of the issue or the</p> <p>17 diagnosis.</p>



18· Q· That's helpful· Thank you.  
19· Under Axis V, it says "Current" and "GAF  
20· 50."· I guess, first, what is "GAF"?  
21· A· Oh, my goodness [laughed].  
22· Q· [Laughed].  
23· A· I don't remember what it -- It's something  
24· functioning.  
25· Q· Oh, if you don't remember what it -- what  
·1· it -- What does it generally mean?· What does it entail?  
·2· What -- What does the number "50" mean?  
·3· A· It's the severity of how it's affecting them.  
·4· Like, "50" means it's pretty moderate· But it's -- The  
·5· higher you go, the healthier the individual· The lower  
·6· you go, the more the severe the issue.  
·7· Q· That's what I needed· Thank you.  
·8· So when you're saying "50," you said that  
·9· was moderate severity of his symptoms?  
10· A· Right· Yes.  
11· Q· Thanks.  
12· Looking at Axis II, you say "defer," so  
13· what does "defer" mean?  
14· A· Defer for the -- Well, for Axis III -- I'm not  
15· a medical doctor, so I don't really choose to write  
16· anything there· So I defer to their medical doctor.  
17· And Axis II, I didn't see at the time any kind of  
18· personality disorders, so I deferred to nothing was  
19· there [laughed].  
20· Q· Understood.  
21· Umm· At a later time, umm, did you see  
22· any indications that Mr. Kelley might have behavior  
23· consistent -- or symptoms consistent with a personality  
24· disorder?  
25· A· No.  
·1· Q· Can paranoia be consistent with a personality  
·2· disorder?  
·3· A· I think it can be a trait of several  
·4· personality disorders, but, you know, they've got  
·5· several traits.  
·6· Q· So you felt like the paranoia alone wasn't  
·7· sufficient to diagnose a personality disorder?· Is that  
·8· fair?  
·9· A· That's fair.  
10· Q· And at -- at other times with -- with other  
11· clients, have you had the opportunity to diagnose a  
12· personality disorder?  
13· A· Yes.

14· Q· Thank you.  
15· Looking at Axis I, umm, it looks like it  
16· says "F31.9"; is that right?  
17· A· Yes.  
18· Q· And then it says, it looks like, "Bipolar I."  
19· And then could you read the rest to me? I think it's an  
20· abbreviation. I can't quite make it out.  
21· A· Sure. "Bipolar 1 disorder, current episode  
22· unspecified."  
23· Q· And what's that mean in laymen's terms?  
24· A· Umm. That he was definitely in Bipolar I  
25· disorder, but the current experience he was having, the  
·1· current episode, if you will, was -- I couldn't decipher  
·2· if it was mixed or if he was manic or if he was  
·3· predominantly depressed. Figure that out as a -- at a  
·4· later date when you get to know them better.  
·5· Q· Understood.  
·6· But after that first meeting, you were  
·7· convinced he had Bipolar I disorder of some type?  
·8· A· Yes.  
·9· Q· And what led you to that conclusion?  
10· A· Just the -- the combination between the very  
11· heightened mood and then the very depressive moments  
12· that he would have just fit with the diagno -- the  
13· symptoms [laughed].  
14· Q· Understood.  
15· When you say "heightened mood," could you  
16· explain a little more what you mean by that?  
17· A· Like the anxiety and the paranoia and, umm,  
18· other symptoms I'm guessing I saw at the time.  
19· Q· Sure.  
20· Do you recall seeing any other symptoms  
21· of Mr. Kelley that were indicative of mania?  
22· A· I don't recall at this time.  
23· Q· Okay. And we talked about the depression  
24· already. At any of the time during your treatment of  
25· Mr. Kelley did you revisit that diagnosis or see a  
·1· need -- see a need to revisit it?  
·2· A· I don't recall.  
·3· Q· Do you recall if you needed to make a  
·4· differential diagnosis during this first meeting,  
·5· differentiating bipolar from another type of disorder?  
·6· A· No.  
·7· Q· Is bipolar disorder frequently treated with  
·8· medication?  
·9· A· Yes, it can be.

	<p>10· Q· And I'm guessing from what we said earlier,</p> <p>11· umm, it sounded like he wasn't on any medication for</p> <p>12· bipolar at this time; is that right?</p> <p>13· A· Correct.</p> <p>14· Q· Was that concerning to you at all?</p> <p>15· A· Not at the time.</p> <p>16· Q· Was it at a later time?</p> <p>17· A· No.</p> <p>18· Q· And during the visit or any time did</p> <p>19· Mr. Kelley relay to you that he had been diagnosed with</p> <p>20· bipolar disorder at any time in the past?</p> <p>21· A· No.</p> <p>22· Q· As part of your caseload overall do you</p> <p>23· regularly treat patients with bipolar disorder?</p> <p>24· A· Yes.</p> <p>25· Q· And can bipolar disorder clients have</p> <p>·1· instances where they lose touch with reality or</p> <p>·2· psychotic breaks?</p> <p>·3· A· Yes.</p> <p>·4· Q· I think we covered this· But you never saw</p> <p>·5· anything like that with Mr. Kelley?</p> <p>·6· A· No, I did not.</p> <p>·7· Q· And can bi -- clients with bipolar disorder</p> <p>·8· sometimes engage in -- in risky behavior?</p> <p>·9· A· Yes.</p> <p>10· Q· At this time did you have any concerns about</p> <p>11· Mr. Kelley engaging in risky behavior?</p> <p>12· A· No.</p> <p>13· Q· Did you at a later time?</p> <p>14· A· No.</p> <p>15· Q· Now, at any point in time did you have</p> <p>16· questions about whether Mr. Kelley needed to be referred</p> <p>17· to a medical doctor to treat his bipolar?</p> <p>18· A· Umm· If you see later in the notes, I wrote a</p> <p>19· letter for him to go to a doctor for anxiety medicines</p> <p>20· but not bipolar.</p> <p>21· Q· Okay· Thank you for pointing that out· And</p> <p>22· we'll get to that in one minute.</p>
86:19-87:18 [JEX 63]	<p>19· Before we review the treatment notes,</p> <p>20· just -- And if you need to look back on the calendar we</p> <p>21· looked at earlier, it's the seventh page of the</p> <p>22· documents, umm, what we've marked as Marlowe 7, and --</p> <p>23· But looking at it generally, it looks like, for the most</p> <p>24· part, your treatment of Mr. Kelley, so during at least</p> <p>25· the summer of 2016, was twice a week?· Does that sound</p> <p>·1· right?</p>

	<p>·2· A· Yes.</p> <p>·3· Q· Is that typical for your clients?</p> <p>·4· A· Some.</p> <p>·5· Q· Is that a number that you decided on with</p> <p>·6· Mr. Kelley?</p> <p>·7· A· Yes.</p> <p>·8· Q· And is that a, umm -- Was the amount of</p> <p>·9· treatment sessions per week any way indicative of the</p> <p>10· level of his problems?</p> <p>11· A· No.</p> <p>12· Q· But, obviously, you felt that coming in twice</p> <p>13· a week could be beneficial to him?</p> <p>14· A· Yes.</p> <p>15· Q· And for setting appointments did you have a</p> <p>16· preset schedule with him or did he just schedule at the</p> <p>17· end of every session?</p> <p>18· A· I honestly don't recall [laughed].</p>
90:21-97:16 [JEX 63]	<p>·1· turn first to -- We're going to go chronologically, so</p> <p>·2· that starts at the end of the documents you gave to us.</p> <p>·3· So I'm looking at here Marlowe 46, which is the note for</p> <p>·4· June 6th as well as June 9th. Are you there?</p> <p>·5· A· Yes.</p> <p>·6· Q· Thanks.</p> <p>·7· Again, is this a form that's provided to</p> <p>·8· you by the counseling center for use in your practice?</p> <p>·9· A· Yes.</p> <p>10· Q· Are you required to use this form?</p> <p>11· A· No.</p> <p>12· Q· And I'd like to just quickly generally talk</p> <p>13· about the form before we get into some of the specifics</p> <p>14· about what you notated for Mr. Kelley. So, umm, where</p> <p>15· it says "MENTAL STATUS," what is that referring to</p> <p>16· generally?</p> <p>17· A· Like if they're orientated to time, place,</p> <p>18· themselves, like if they know where they're at and</p> <p>19· they're present, if you will.</p> <p>20· Q· And then it looks like below that there's some</p> <p>21· symptoms that a client might present with?</p> <p>22· A· Yes.</p> <p>23· Q· And then "THOUGHT CONTENT," what's that</p> <p>24· referring to?</p> <p>25· A· How they process their thoughts, if it's</p> <p>·1· organized or unorganized, if they're jumping everywhere,</p> <p>·2· or if it's kind of like this dialogue where it's pretty</p> <p>·3· clear. And appro -- That's what "Appropriate" is.</p> <p>·4· Q· Okay. And then "SPEECH," what is that</p>

·5· referring to?

·6· A.· Like if they're -- How they're responding to  
·7· you, if they can enunciate clearly or if they're holding  
·8· back or if they're giving you one-word answers, how  
·9· they're talking to you.

10· Q.· Okay.· And -- And then "AFFECT," what is  
11 "AFFECT"?

12· A.· Their expressions, like if they're -- how --  
13 how their face is moving, I guess.· [Laughed].· If  
14 they're happy, sad, flat; what they're presenting  
15 mood-wise.

16· Q.· Okay.· And looking at the notes here, these  
17· are all your handwriting?

18· A.· Yeah.

19· Q.· Are those your signatures --

20· A.· Correct.

21· Q.· -- on those notes?

22· A.· Yes.

23· Q.· And then just as a general practice, how long  
24· after treatment sessions do you complete these notes?

25· A.· Same day.

·1· Q.· So you do it while it's still fresh in your --  
·2· in your mind?

·3· A.· Yes.

·4· Q.· And the level of detail in the notes here,  
·5· particularly the "SUMMARY" sec -- section, is that  
·6· consistent with the detail you use in other notes --

·7· A.· Yes.

·8· Q.· -- with other -- with other clients?

·9· A.· Yes, absolutely.

10· Q.· And does anyone, insurance or anyone, review  
11 these treatment notes?

12· A.· No.

13· Q.· So these notes are for just your benefit and  
14 potentially for the benefit of any future treater?

15· A.· Yes.

16· Q.· All right.· I'm looking at the -- the  
17 June 6th, 2016, note, and I noticed you -- for -- under  
18 "MENTAL STATUS," and -- and you marked certain symptoms,  
19 like "Depressed," it looks like, "Withdrawn," "Fearful,"  
20 "Tense," "Anxious," "Suspicious."· Do you see that?

21· A.· Yeah.· Yes.

22· Q.· So that means you observed those behaviors  
23 during the session?

24· A.· Yes.

25· Q.· And that's consistent with what we were

·1· talking about earlier because this was the intake  
·2· session; correct?  
·3· A· Yes.  
·4· Q· It looks like here that the box next to  
·5· "Paranoid" was not marked.· Do you know why?  
·6· A· Because I marked "Suspicious."  
·7· Q· So in your mind, putting down two versus one  
·8· was redundant?  
·9· A· Yes.  
10· Q· Next to "SPEECH," it looks like you marked  
11· "Impaired."· Umm.· What did you mean by that?  
12· A· The difficulty of him talking and getting it  
13· out.  
14· Q· And did you feel that his impaired speech was  
15· due to his guardedness or was there some other reason?  
16· A· Being guarded and hesitant.  
17· Q· Under "AFFECT," it looks like you marked  
18· Flat/Blunted."· What does that mean?  
19· A· Like if you look at someone's face and there's  
20· just no expression, they're just --  
21· (Witness made distinct sound.  
22· A· No expression.  
23· Q· (BY MR. FURMAN) And that -- that's how he  
24· presented to you?  
25· A· Yes.  
·1· Q· Did he ever smile in session?  
·2· A· I don't recall.  
·3· Q· Do you know if he ever -- Do you recall if he  
·4· ever cried in session or got emotional?  
·5· A· No, I don't recall.  
·6· Q· And we talked about several of these topics  
·7· already.· Umm.· I just -- I just want to touch briefly  
·8· on the hunting issue.· It says -- looks like it says,  
·9· "Lives on family ranch," and then, "likes hunting hogs  
10· and deer."· Umm.· What did -- What did he tell you about  
11· that?  
12· A· Just simply that is all I can recall him  
13· saying.  
14· Q· And did he do the hunting on his parents'  
15· ranch?  
16· A· Yes.  
17· Q· Did he say the reason he was hunting, just  
18· because he enjoyed it or some other reason?  
19· A· I don't think he specified.· I guess I assumed  
20· because he enjoyed it.  
21· Q· Did he ever express to you any enjoyment or

22· satisfaction in hurting or killing animals?  
23· A· No.  
24· Q· And other than this session, do you recall if  
25· he talked about hunting and -- or using firearms at any  
·1· other point during your treatment of him?  
·2· A· No.  
·3· Q· Looking at the treatment note at the bottom of  
·4· that page, the June 9th treatment note, it looks like  
·5· under "MENTAL STATUS," several of the same boxes are  
·6· still checked· Do you see that?  
·7· A· Yes.  
·8· Q· And do you have any specific rec --  
·9· recollection of that second appointment?  
10· A· No.  
11· Q· And we've already talked about some of this.  
12· I won't repeat myself too much· But it looks like it  
13· says, "Discussed financial concerns," and then it says,  
14· "stress about working around people."· With regards to  
15· "stress about working around people," do you recall  
16· anything he might have said?  
17· A· No, I don't.  
18· Q· And then below that, it looks like it says,  
19· "Shared was in military '09 through '13."· Did I read  
20· that right?  
21· A· Yes.  
22· Q· And you said that's to say he -- he told you  
23· about his service in the military and that was between  
24· 2009 and 2013?· Does that sound right?  
25· A· I hope that's what that means· It either  
·1· means that or September 2013· He got out -- I'm pretty  
·2· sure '09 to '13 is what it means, that he served.  
·3· Q· And it says, "Discussed family relationship."  
·4· Do you recall specifically what was discussed during  
·5· that appointment?  
·6· A· No, I don't.  
·7· Q· In regards to the stress about working around  
·8· people, do you ever have a sense of whether Mr. Kelley  
·9· had problems or issues dealing with people?  
10· A· Well, yeah, like the history of being bullied  
11· and beat up and mistreated· That's probably why he was  
12· guarded, and that doesn't fare well when you're around  
13· other people.  
14· Q· So you felt that bullying and guardedness were  
15· making it hard for him to interact with others?  
16· A· Yes.

<p>105:21- 108:4 [JEX 63]</p>	<p>21· Q· (BY MR. FURMAN) Mr. Marl -- Ms. Marlowe, we 22· went on a break· We had in front of you Marlowe 43, 23· which at the top says "July 1, 2016," a treatment note. 24· Are you there? 25· A· Yes. ·1· Q· All right· And looking under the summary for ·2· that treatment note, you have, "Hard to focus," in ·3· quotes· Umm· And do you recall why Mr. Kelley might ·4· have said that? ·5· A· No. ·6· Q· Over the course of your treatment of him, did ·7· he describe difficulties in focusing? ·8· A· I don't recall. ·9· Q· Well, was any ability -- or inability of him 10· to focus, was that ever something that was a concern for 11· you? 12· A· Umm· No. 13· Q· Okay· I'm going to turn to the note at the 14· bottom of the page, the July 5th, 2016, note· It looks 15· like several of these topics we've talked about before, 16· the history of bullying, and on the third or fourth line 17· there, umm, financial stressors· Umm· On the second to 18· the bottom line, it says, "History of wife cheating." 19· Do you see that? 20· A· Yes. 21· Q· Do you recall specifically what was talked 22· about at that time? 23· A· No, I do not. 24· Q· Was -- The cheating of his prior wife, is that 25· something that came up multiple times during his ·1· treatment with you? ·2· A· Yes· It -- I mean, it appears so based off of ·3· my notes· [Laughed]. ·4· Q· Well, was it something that was particularly ·5· bothersome to him? ·6· A· Yes. ·7· Q· Do you know why it was bothersome to him? ·8· A· Because he had suspicions of his current wife ·9· cheating. 10· Q· And when did he make those suspicions first 11· known to you? 12· A· I don't recall the details. 13· Q· Do you recall what made him -- what behaviors 14· made him suspicious his current wife was cheating? 15· A· No, not at this time· I just know that our 16· last session in '16 was because of that.</p>
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	<p>17· Q· Okay· Umm· I'll get that -- to that in a  18· minute· Umm· That's helpful.  19· And at this time was there anything  20· unusual or concerning about his suspicions of his  21· current wife cheating?  22· A· No.  23· Q· So it sounds like you thought he had a -- some  24· reason to be suspicious versus -- I'm sure some of your  25· clients have paranoia or suspicions for no good reason.  ·1· But it sounds like your understanding was that  ·2· Mr. Kelley had reason to potentially believe that, in  ·3· fact, his wife was cheating?  ·4· A· I don't recall.</p>
112:1-116:8 [JEX 63]	<p>·1· Turning to the July 19th treatment note,  ·2· it looks like the, I guess, third line from the bottom,  ·3· second filled in line, it says, "Medicine options." Is  ·4· that what that says?  ·5· A· Yes.  ·6· Q· And then is that like an arrow being drawn  ·7· from "Processed anxiety"?  ·8· A· Yes.  ·9· Q· Okay· And -- And what is the significance of  10· the arrow?  11· A· It correlated· The medicine options were for  12· the anxiety.  13· Q· So it seemed like during the session, you  14· discussed different medication options for anxiety with  15· him?  16· A· Just the possibility of utilizing medicine.  17· Q· And at -- at this time did you feel that  18· medicine would be an appropriate option for him?  19· A· Yes· Usually I start out by not saying  20· anything about medicine to see if coping is sufficient  21· on its own, but then if it's not and we need a little  22· extra, I refer them out to someone that can add medicine  23· plus treatment.  24· Q· And is that what you did here?  25· A· Yes.  ·1· Q· All right· And then the next page in the  ·2· file, Marlowe 40, I think this is the letter that you  ·3· wrote, if you'd turn to there.  ·4· A· Yes· Sorry.  ·5· Q· And is that your letter?  ·6· A· Yes.  ·7· Q· And that's your -- your signature?  ·8· A· Yes.</p>

·9· Q· All right· Umm· Looking at the second line  
10· of the lever -- letter, umm, you refer to  
11· "psychoanalysis therapy."· Do you know why you used that  
12· term there?  
13· A· Not at the time [laughed] because we were  
14· just -- No.  
15· Q· Now, do you -- do you have any idea why you  
16· would have put that there?  
17· A· No.  
18· Q· Okay· And then the next sentence, it says,  
19· "Devin has consistently expressed severe anxiety."· Do  
20· you see that?  
21· A· Yes.  
22· Q· And that -- that's based off your observation  
23· of him?  
24· A· Yes.  
25· Can -- Can I say something?· I know why I  
·1· put "psychoanalysis."· It just came to me.  
·2· Q· Oh, okay.  
·3· A· Because sometimes if you just write "therapy,"  
·4· people think physical therapy or other forms of therapy.  
·5· So --  
·6· Q· Oh [laughed].  
·7· A· -- I put that for like mental health therapy.  
·8· Q· That's smart· Okay· That makes sense· Thank  
·9· you· Yeah, if you need to correct a statement or amend  
10· something like that, that's perfectly fine, so feel free  
11· to do so.  
12· And then the next sentence, "Devin has  
13· expressed symptoms of the following," and you list out  
14· some symptoms· So these are symptoms he's expressed to  
15· you during the course of treatment?  
16· A· Yes.  
17· Q· And then going to the very end of the letter,  
18· it says, "Devin reports that the medications that have  
19· worked in the past included Klonopin and Xanax."· Do you  
20· see that?  
21· A· Yes.  
22· Q· And do you know when during the course of  
23· treatment he informed you that he had, in fact, been on  
24· those medications?  
25· A· I don't recall specifically.  
·1· Q· And did you -- At this time did you feel that  
·2· it would be appropriate for Mr. Kelley to be on those  
·3· medications?  
·4· A· Yes.

	<p>·5· Q· And do those medications have potential for</p> <p>·6· abuse by some people?</p> <p>·7· A· I suppose for some.</p> <p>·8· Q· And did you have any concerns about Mr. Kelley</p> <p>·9· abusing those medications if he were to be prescribed</p> <p>10· them?</p> <p>11· A· No.</p> <p>12· Q· Is this type of letter something that you</p> <p>13· typically do when clients request medication?</p> <p>14· A· Umm· Sometimes, if they feel like it would</p> <p>15· help.</p> <p>16· Q· Do you recall why you wrote the letter here?</p> <p>17· A· He wasn't very good at expressing what was</p> <p>18· wrong specifically symptom-wise, and so it was an aid</p> <p>19· for when he went to the doctor to take it with him.</p> <p>20· Q· And do you know if he ever went to the doctor</p> <p>21· to -- to get help with anxiety?</p> <p>22· A· I think in one of the next notes it talks</p> <p>23· about him going to an MHMR facility.</p> <p>24· Q· And do you recall whether they did, in fact,</p> <p>25· prescribe him medication?</p> <p>·1· A· I don't recall.</p> <p>·2· Q· Due to Mr. Kelley's reported use of marijuana</p> <p>·3· daily, did that present any concerns regarding, umm, at</p> <p>·4· least those medications like Klonopin and Xanax?</p> <p>·5· A· No.</p> <p>·6· Q· Did you ever believe that Mr. Kelley was</p> <p>·7· exaggerating his anxiety symptoms?</p> <p>8· A· No.</p>
118:24- 121:2 [JEX 63]	<p>24· Q· We can go ahead and turn to the next page.</p> <p>25· This is Marlowe 38, a treatment note, July 28th, 2016,</p> <p>·1· on top· Are you there?</p> <p>·2· A· Yes, sir· I'm sorry.</p> <p>·3· Q· No problem.</p> <p>·4· And here I'm looking at the "SUMMARY."</p> <p>·5· Umm· And this is what -- what you were referring to</p> <p>·6· previously· It says, "Discussed wife's sexual abuse</p> <p>·7· past." And do you recall anything specifically about</p> <p>·8· what Mr. Kelley said about her past?</p> <p>·9· A· Not specifically; just that he was very upset</p> <p>10· that she had been hurt by her family in that way.</p> <p>11· Q· Do you know why it was bothering him at this</p> <p>12· particular time?</p> <p>13· A· Because he endured abuse and bullying</p> <p>14· throughout his life· You mean why specifically at that</p> <p>15· time?</p>

	<p>16· Q· Right· I guess -- Or what I'm looking at, at  17· this July 28th -- So I would suspect his wife would have  18· told him about any abuse sometime prior to that· So I  19· didn't know if it was a triggering event or event  20· particular to this time that made him want to talk about  21· his wife's past abuse.  22· A· No, I'm not sure specifically· Sometimes  23· stuff just comes up.  24· Q· Did he ever express violence or wanting to  25· commit violence that -- to people who had done this  ·1· to -- to his wife?  ·2· A· No.  ·3· Q· And below that, it says, "Hard to  ·4· concentrate."· Do you recall any -- anything  ·5· specifically about that?  ·6· A· No.  ·7· Q· Below that, it says, "Depression worse."· Do  ·8· you recall specifically why it was worse?  ·9· A· No.  10· Q· Now, at the bottom there, you said that M --  11· "MHMR for medication."· So that's the local clinic, I  12· think you were saying?  13· A· Right· If somebody has low to no income,  14· it's -- it's a resource for them in the community run by  15· the state.  16· Q· Thank you.  17· Okay· Let's look at the obvious second  18· treatment note· At the top, he says, "No more" -- or  19· you say, "No more anxiety or" -- "or racing thoughts."  20· Umm· Do you know why that was?  21· A· No.  22· Q· And it looks like it talks about some of the  23· issues that we've already talked about.  24· Do you recall if the reduction in anxiety  25· or racing thoughts was correlated with starting any  ·1· medicine?  ·2· A· No, I don't recall specifically.</p>
128:8-132:5 [JEX 63]	<p>·8· Q· All right· Well, let's turn to the -- the  ·9· 9/1/17 note· So this is Marlowe 34 in my copy.  10· A· Okay.  11· Q· So this looks to be about a year after the  12· last time you saw him· Umm· Do you recall the  13· circumstances and him reinitiating -- reinitiating  14· treatment?  15· A· No, I don't recall.  16· Q· Is something like this, where a client doesn't</p>

17· come in for a year and then comes back, is something  
18· like that unusual?  
19· A· No.  
20· Q· In the period between 2016 and when he came  
21· back in 2017, had -- prior to him rescheduling, had you  
22· had any contact with him?  
23· A· No.  
24· Q· And during that period of time, after he last  
25· saw you in 2016 and then in 2017, do you know if he  
·1· sought, you know, psychotherapy elsewhere?  
·2· A· No, I don't know.  
·3· Q· And when you saw him in September 2017, did he  
·4· seem different to you than he had been about a year  
·5· prior?  
·6· A· No· He seemed about the same.  
·7· Q· Was his physical appearance the same?  
·8· A· No· I think his hair was falling out· He had  
·9· a condition or something with his skin on his head.  
10· Q· Okay· Umm· What about from a mental health  
11· perspective?· Was his mental health status the same or  
12· similar to when you last saw him?  
13· A· No· It seemed like it was getting better.  
14· Q· Getting better how?· What specifically?  
15· A· Well, he -- They had -- He -- His wife had the  
16· girl, so now he had his son and his baby girl· He had  
17· just got a new job as a security guard at a RV park, and  
18· he said that he had friends that had got him the job.  
19· So there was support there that hadn't been there  
20· before.  
21· Q· On the first part of the "SUMMARY," it  
22· sound -- it says, "Thinks he has Asperger's diagnosis."  
23· Umm· I guess, first, what is Asperger's?  
24· A· It's a form of autism.  
25· Q· And do you know why he was saying that to you?  
·1· A· I think he was just updating me on where he  
·2· was at, and he -- It was a self-diagnosis· He had been  
·3· doing some research on Google and said that some of the  
·4· traits on there seemed like they fit him, and he was  
·5· just sharing that with me.  
·6· Q· Did you have any clinical opinion as to  
·7· whether or not he had Asperger's?  
·8· A· No, but I notated it thinking that he was  
·9· going to maybe come back and we could look into it  
10· further.  
11· Q· Understood.  
12· And at the time he came in for this

	<p>13· September 2017 appointment, umm, was it his intention to  14· come back into treatment?  15· A· I think he was just touching base to see if --  16· I think he was really just probing the Asperger's thing,  17· but since I didn't bite for it, he -- that might have  18· been part of why he didn't come back.· I was hoping he  19· was initiating services.  20· Q· Sure.  21· Now, at the bottom of that note, it looks  22· like it says, "Client was just catching up - refused  23· further services."· Is that what you were referring to?  24· A· Yes.  25· Q· So is it fair to say that you felt like he  ·1· could still benefit from treatment at this time but  ·2· he -- he'd like to not continue?  ·3· A· Yes.  ·4· Q· Do you know whether when he stopped treatment  ·5· in 2016, did -- was part or any of the reason he stopped  ·6· coming because of any loss of Medicaid benefits?  ·7· A· I don't know.· I don't know at that time. I  ·8· know that when he --  ·9· Q· Okay.  10· A· -- came in September seven -- 2017, he said he  11· had Medicaid, but he didn't, and so I didn't even get  12· paid for that session [laughed].  13· Q· I -- I -- Sorry.· I missed that.· What session  14· was that?  15· A· The September 1st, 2017.  16· Q· Oh, okay.· Was there anything concerning to  17· you at all in Mr. Kelley's presentation to you during  18· that September 2017 visit?  19· A· No.  20· Q· And during the course of this visit did he  21· discuss anything about being on medication or -- or  22· medicine?  23· A· No.  24· Q· Okay.· And when -- It says he refused further  25· services.· Do you recall specifically the reason he gave  ·1· for not wanting to come back?  ·2· A· No, I don't recall.  ·3· Q· Umm.· Did you -- After this visit did you --  ·4· did you communicate with him at all in any way?  ·5· A· No, I don't think so.</p>
139:20- 140:17 [JEX 63]	<p>20· Q· Umm.· Turn -- Turning back to, you know, the  21· events of November 25th -- or - sorry - November 5th,  22· 2017, the Sutherland Springs church shooting, umm, when</p>

	<p>23· you realized that Mr. Kelley was the shooter, how did</p> <p>24· you -- well, what did you feel about that?</p> <p>25· A· Devastated.</p> <p>·1· Q· Were you surprised?</p> <p>·2· A· Extremely.</p> <p>·3· Q· Why is that?</p> <p>·4· A· You -- You never think somebody you're trying</p> <p>·5· to help is going to do such a horrific thing.</p> <p>·6· Q· And when you found that out, did you reflect</p> <p>·7· at all on your course of treatment with him?</p> <p>·8· A· Of course· Yes.</p> <p>·9· Q· And in looking back, is there anything you</p> <p>10· think you should -- could have done differently?</p> <p>11· A· No.</p> <p>12· Q· As a trained clinician do you have any sense</p> <p>13· on why Mr. Kelley -- Kelley might have done what he did?</p> <p>14· MR. SCHREIBER· Objection· Calls for</p> <p>15· speculation.</p> <p>16· A· I have no idea· I have no idea· It was a</p> <p>17· complete surprise.</p>
141:13-20	<p>13· Q· (BY MR. FURMAN) [Laughed]· So the -- the</p> <p>14· November 5th, 2017, church shooting, umm, there was no</p> <p>15· way you could have possibly foresaw that event based off</p> <p>16· your treatment of Mr. Kelley, was there?</p> <p>17· A· Correct.</p> <p>18· MR. SCHREIBER· Objection· Calls for</p> <p>19· legal conclusion· Calls for speculation.</p> <p>20· A· No, it was not foreseeable with my treatment.</p>

Dated: March 12, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on March 12, 2021, I electronically filed the foregoing with the clerk of court by using the CM/ECF system, and that all counsel of record have received notice and been served through that system.

/s/ Paul David Stern  
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